

Good morning and thank you, Chairman DeSantis, for holding this timely and critical review examining many of the lamentable and preventable consequences resulting from the last three years of what has been wrongly termed as “engagement” of Cuba. It is fair and prudent to assess at this point the “progress” for Cuba promised to the American people such engagement would foster.

I am particularly grateful for the opportunity to testify as the owner of the port of Santiago de Cuba and representing the owners of the Havana Docks Corporation, the principal port in Havana.

As you are aware, the embargo of Cuba began and has existed for the primary purpose of protecting property. Foreign entities and more recently US cruise ships have been trafficking in our stolen property without our consent or consideration to us. Incredibly, because of the malfeasance of the last Administration, for a second time we are the victims in another sorry chapter of American and Cuban history. This must be rectified.

I’m going to follow up my previous testimony in June of 2015, which predicted the criminal behavior and consequences we confront today, and discuss the sole object for which our human rights exist: protecting our self interests; protecting our property.

I will let the other supremely qualified witnesses attest to and discuss the many predictable failures and other crimes that occur inherently when capitulating with what, if we are intellectually honest, can only be termed as Cuba’s white male military dictatorship.

I will not touch on the property rights we normally refer to as human rights- our inalienable right to the property of self and the property of conscience; that is, free speech, association, religion and self-determination, including our health and educational needs.

Instead I will focus on the fundamental right to real property, the critical social and economic importance of property rights and how these were and continue to be raped in Cuba going back decades and accelerated since December 17, 2014.

It should be clear and necessitate the absolute minimum of critical thinking, and certainly not a congressional hearing, that unprincipled engagement with a dictatorship and a society devoid of these rights even ostensibly to promote desired political change is foolish. A dictatorship, one now validated by the world’s greatest superpower, will adapt, strengthen, choose its partners and flourish. Yet, it will remain a dictatorship. China is the perfect example.

Like millions of Americans who owned property in Cuba, as a result of the actions by the Obama Administration that has resulted in trafficking by Americans in our stolen properties, we have been completely disenfranchised a second time by our government with respect to our claims.

The Castro Dictatorship still owes us, the port owners, many hundreds of millions if not more than a trillion dollars over six decades. The Cuban dictatorship has used and benefited from our properties over this period without any compensation or consideration to us.

Foreign entities have similarly trafficked in our stolen properties for decades. Judicial custom- not law- has prevented us from seeking redress in US courts. Such parochial legal traditions are woefully out of step with economic globalization and borderless, modern day connectivity. Certainly, if foreign terrorists who harm Americans or their properties abroad can be tried in US courts as has been determined, so can foreign traffickers in stolen property.

Claimants, however, do have some recourse in US law against such foreigners. The Cuban Liberty and Solidarity Act of 1996, the Helms-Burton Act, requires- I repeat, requires- in Title IV that if the Secretary of State determines there is trafficking by a foreign entity in the confiscated property of an American in Cuba, then he shall- he must- revoke the visas of those people and their families.

In June of 2015 I testified that a Chinese company, China Harbor Engineering Company (CHEC), a subsidiary of China Communications Construction Company (CCCC), has been trafficking in my port property.

I submitted a detailed account of CCCC's activity to the State Department with evidence and a request that State issue a letter to CCCC notifying them that unless they could prove otherwise or negotiate a settlement with me, US law required that the visas of their executives and their families be revoked. Unfortunately, Mark Wells, head of the Cuba desk, refused to act and serially lied to me and my proxies that work was being done on my behalf when, in fact, nothing had been done. This cost me approximately \$100,000 in advocacy fees.

Hopeful that Secretary of State Kerry might intervene if he knew the facts and his obligations under the law and that perhaps pressure from inside the Obama White House, specifically from Ben Rhodes, Obama's Rasputin on all things Cuba and Iran, may have prohibited any action from Wells, I hired close friends of Sec. Kerry's to make him aware of my predicament and act on my behalf.

Sec. Kerry was initially very receptive and understood his obligations under the law. However, he requested we go through the proper channels- State Department lawyers and career bureaucrats- again prior to his intervening. This produced more obstruction. The lawyers at State were intransigent the Chinese were not trafficking, despite the overwhelming evidence and their public pronouncements, prompting me to ask incredulously, "who's side are you on?"

We returned to Sec Kerry in December of 2016 who tentatively agreed to sign a letter notifying CCCC that State was "investigating" trafficking and that visas may be revoked. Clearly, the Chinese would respond either by proving their innocence or negotiating a settlement with me.

However, on Friday morning, January 20, 2017, before the Trump inauguration as a last act Sec. Kerry informed us he would not sign the letter on the advice of the lawyers for reasons of "policy". The law does not allow for policy considerations. Sec. Kerry violated his oath to enforce the laws of the United States. He should have returned his silver stars that day. This cost another \$100,000.

Who is CCCC? They are one of the largest construction companies in the world and the world's largest dredging company. In 2011 they were barred by the World Bank from projects receiving World Bank funds due to graft and corruption. More recently, they built the hotly disputed South China Sea Islands for the Chinese military. They've built huge satellite dishes in Patagonia and Cuba, ostensibly for the Chinese space program.

They are, indeed, bad guys; and they're coming to the US. In the same December as Obama's announcement they purchased a city block off Brickell here in Miami with plans to build a greater than \$1 billion vertical Chinatown exclusively for Chinese nationals. They've also resuscitated a moribund Frank Gehry project in Los Angeles with a \$300 million investment. What's at best capital flight from China is more likely money laundering and organized crime.

Regardless, bureaucrats at the State Department allow them to violate my property rights and laws that protect me regarding my property confiscated in Cuba, while allowing the Chinese to protect assets and take advantage of our rule of law that protects property ownership in general.

In my previous testimony of 2015 I also warned that because the claims have been ignored and almost everything in Cuba is stolen, virtually every American enterprise in Cuba will result in trafficking in the stolen property of many Americans. This is true for hotels, renting rooms through AirBnB, sipping mojitos made with stolen rum brands and smoking stolen cigar brands.

Ironically, it has been and continues to be our port properties that have been the most egregious and public example of this trafficking and violations of US law.

In the spring of 2015 the US cruise lines, most notably Carnival, Royal Caribbean and Norwegian, received licenses from the Treasury to cruise Cuba. It was a testament to the irrationality of the Obama initiative. Tourism to Cuba is patently illegal. The standard for approved travel is a requirement for “people to people” contact.

A cruise is the antithesis of people to people travel. The overwhelming majority of the time passengers are cradled in the luxurious confines of the ship, insulated from the blight and deprivations Cubans suffer, where they eat the majority of their meals, spend their nights comfortably and do onboard activities. Cubans are not allowed on the ship. The passengers rarely interact with ordinary Cubans.

Actually, it is illegal in Cuba for Cubans- including Cuban Americans- to board a ship or enter or leave Cuba by boat. It is illegal for a Cuban to even own a boat. During the months Carnival was negotiating with the dictatorship over the terms of their partnership, they were aware of this Cuban law. Carnival denying passage to Cuban-Americans on a Cuba cruise violated the 1964 Civil Rights Act by discriminating based on country of birth.

Carnival didn’t care about the law and did the deal. The money was too great. It is astonishing they lacked the insight that they couldn’t actually get away with such behavior. They were repentant only once they were discovered, shamed and sued. It was all greed. It was disgraceful.

This appears to be the ethos of the cruise lines. They were immediately notified of my claim in 2015 and my intent to prosecute them to the full extent of the law for any unauthorized use of my property. They were already aware of the Havana Docks’ claim, having tried to buy their claim in the nineties. Again, they didn’t care.

Irrespective of the immorality of partnering with the Cuban dictatorship that has murdered tens of thousands of its citizens, exiled more than 20% of its population, disenfranchised tens of millions more and has institutionalized slavery through its two currency system, American corporations who operate in Cuba must do so lawfully.

Yes, they can legally cruise Cuba. However, they cannot do so in violation of US trafficking laws. The only exception to trafficking in the law the cruise lines could reasonably claim that would exempt them from the definition of trafficking is in 401(b)(2)(B)(iii), that use of the property is “necessary” for the purpose of the travel.

This is patently false. It is well known that cruise lines often drop anchor rather than dock at a port and ferry passengers to shore using smaller boats. Shortly after the licenses were issued, the CEO of Norwegian Cruise Lines, a Cuban-American named Frank Del Río, boasted to cNBC’s Michelle Cabrera-Caruso during an interview at a Wharton Business School conference specifically devoted to doing business in Cuba, in a segment specifically on cruising Cuba, that a port “was nice, but not necessary” to cruise Cuba. He openly scoffed at and ridiculed the notion of the necessity of docking at a port.

If anyone doubts Mr. Del Río's credibility as an expert, Norwegian paid him \$32 million in the year he made that statement. He's the expert.

On 3 separate occasions when I presented these facts to State Department officials and requested a Title IV action against the foreign executives and directors of the cruise lines, State officials determined without any investigation that it was necessary for the cruise lines to use our properties to cruise Cuba. This occurred even after showing them the video of Norwegian's CEO specifically and unequivocally refuting that assertion.

Recently, the US Cuba Trade Council estimated that in the 3 years beginning in 2017 the cruise lines will receive more than \$761 million in gross revenues from ticket sales to Cuba. Passengers will spend more than \$80 million in revenue to Cuban State run enterprises. The cruise lines will pay more than \$21 million in port fees to the Cuban military, the dictatorship, for the use of our properties.

Keep in mind that the 3 largest cruise lines, Carnival, Norwegian and Royal Caribbean, all Miami based, grossed almost \$29 billion in 2016. Will their political power through hefty lobbying corrupt our politicians and protect them? The safe bet is that, like in the novel Animal Farm, some animals are more equal than others; so, yes.

That is certainly the bet of the cruise lines. They claim to be fully in compliance with the law, which is clearly wrong as demonstrated above. They also interpret the waiver of Title III of Helms-Burton, which defines the civil damages for trafficking and allows for civil lawsuits in Federal court to recover these damages, as immunity. Wrong again.

Title III in the law has two components. The first is the cause of action- the actual definition and enactment of the trafficking provision. The other is the right to action, the ability to sue a trafficker.

The law allows the President to waive both components for 6 months initially and then every 6 months, thereafter. Each President since 1996 has waived the right to action every 6 months. The initial intent was to encourage the cessation of trafficking and thereafter to appease other countries already in Cuba who complained of the territorial overreach of Title III: allowing an American to sue a foreigner in a US court for a crime committed in Cuba.

However, President Bill Clinton did not suspend and enacted the cause of action in Title III to go into effect as per Section 306(a) on August 1, 1996 and that liability for trafficking would begin on November 1, 1996.

That is, as his Deputy National Security Advisor Sandy Berger clarified during a White House press briefing on July 16, 1996 explaining the President's actions, "liability for those who traffic in or profit from confiscated property in Cuba will arise on November 1st as provided under the law that liability is not extinguishable". He reiterated throughout the session that, "during this period liability will continue to accrue, the meter will be ticking" and that the President "cannot simply then say the liability no longer accrues".

Moreover, Berger asserted something that has been overlooked in the Helms-Burton debate, that the President has the authority to "make a judgment about whether that suspension continues in whole or in part. He could continue that suspension with respect to all suits, he could continue that suspension with respect to certain countries or certain companies."

After Obama's Cuba opening, the argument of territorial overreach doesn't apply to American entities. Why should the cruise lines or any American be allowed to traffic in the stolen property claimed by another American in Cuba in violation of US law?

How is this violation any different from the cruise lines violation of the Civil Rights Act? It is not. President Trump should no longer waive Title III for the cruise lines or any American entity.

The failure of the United States Government to follow and enforce the law regarding confiscated property in Cuba is a reflection of 2 broader problems.

First is the failure to recognize that fundamentally Cuba has a property rights problem. The human rights abuses and violations for which the dictatorship is infamous are simply the measures necessary to defend the unjustifiable, the theft of all property in Cuba.

How, then, will trafficking in stolen property by American companies bring democracy as some argue? How will capitalism work, much less be transformative, without clear title or property rights? How can there be credit?

Or the legal transfer of goods and services? In Cuba there is no contract sanctity, no independent judiciary or transparent enforcement and regulatory agencies. Americans cannot hire Cubans independently, who are not legal entities and have no property rights.

Such ventures are only viable while the dictatorship remains. A democratic government will almost certainly restore clear title and traffickers will likely be prosecuted. We will certainly prosecute traffickers and it is unlikely that we will ever permit the major cruise lines to use our properties in a free and democratic Cuba.

American corporations will, therefore, not want regime change. The dictatorship eliminates or restricts any competition for them. Like with Tiananmen Square, when Cubans begin to demand political freedoms with economic liberalization, these companies will be silent and absent as violent repression ensues. They are partners with the dictatorship. They will not bite the hand that feeds them. Investment seeks certainty.

The Chinese and the cruise lines are indisputably trafficking in our stolen properties in Cuba. They must receive Title IV notifications. If they are innocent, they have ample resources to defend themselves. Moreover, if they are not trafficking there should be no worry for them.

Until then, there is absolutely no justification to provide political and legal cover to shield these Americans from the consequences of trafficking in the stolen property in Cuba claimed by another American. This would never happen if the property was anywhere, but Cuba.

The second and more serious problem is the culture of entitlement and lack of accountability that has developed amongst the elites and within the bureaucracy of our government. They abandon their sworn obligations to uphold and enforce the law when there is a conflict with their personal feelings and opinions concerning a matter.

This could not be more evident in my treatment by the State Department, which has been exactly what the American public has witnessed recently by the various Justice Department and FBI officials in the Russia collusion investigation. This is a cancer in our democracy and to our freedom.

Among the many things that makes America great is our system of equal protection under the law. These rogue officials have confiscated those protections guaranteed to us by law and made them political decisions. This erodes our freedoms.

In summary, the fact remains that everything in Cuba is stolen and, as predicted, every American venture there will likely result in stolen property. Property theft and risks from trafficking have been marginalized as “market conditions”, rather than crimes. Because there is no precedent for indemnification to claimants who’ve lost property there and our leaders have done little to protect property by enforcing the law, confiscation by the dictatorship will continue.

How our claims are handled is, ironically, more important to the burgeoning Cuban “entrepreneurs” so many falsely claim to help. They’ve invested what little they have, yet risk capricious and arbitrary confiscation. They, in effect, own nothing. We are that precedent that underwrites them. If a primary goal of US policy towards Cuba is to empower Cubans, prove this by demonstrating and not simply talking about protecting property.

I will end how The President began on June 16, 2017 here in Miami by explaining his Cuba policy with the obvious change that needs to occur: “we will enforce existing law”.

Not doing so has been the constant since 1996 and would be the logical explanation for what some claim that sanctions against Cuba are failed. The waiver of the right to action and the failure to enforce Title IV surely meets the oft-quoted definition of insanity, doing the same thing over and over again and expecting different results.

Instead, what has evolved is policy towards Cuba that is little more than politically sanctioned and protected organized crime.